

APPEAL NO. 023276
FILED FEBRUARY 10, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 11, 2002. The hearing officer resolved the disputed issue by deciding that the compensable injury of _____, does not extend to the left elbow and cervical spine. The appellant (claimant) appealed, essentially arguing that the hearing officer's extent-of-injury determination is against the great weight of the evidence. In its response, the respondent (carrier) argues that the claimant's appeal is untimely. In the alternative, the carrier urges affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(a) (Rule 102.5(a)), all notices and written communications to the claimant or claimant's representative will be mailed to the most recent address supplied by the claimant or representative. Rule 102.5(d) provides that the claimant is deemed to have received the decision and order of the hearing officer five days after it was mailed. The Appeals Panel has held that, where Texas Workers' Compensation Commission (Commission) records show mailing on a particular day to the address confirmed by the claimant as being correct, a mere statement that the decision was not received until a later date is not sufficient to extend the date of receipt past the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 982248, decided November 5, 1998; Texas Workers' Compensation Commission Appeal No. 990170, decided March 18, 1999. The address to which the claimant's copy of the hearing officer's decision was sent is the same address as that shown for the claimant on the sign-in sheet for the hearing. The claimant is deemed to have received the hearing officer's decision on September 21, 2002, five days after it was mailed. The claimant had 15 days, excluding Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code, or until Friday, October 11, 2002, to mail her request for review to the Commission. The claimant's appeal reflects that it was faxed to the Commission at 9:55 p.m. on December 29, 2002. Thus, the appeal is untimely.

The claimant's appeal being untimely, the decision of the hearing officer has become final. Section 410.169.

The true corporate name of the insurance carrier is **TEXAS PROPERTY AND CASUALTY INSURANCE GUARANTY ASSOCIATION** for **United Pacific Insurance Company, an impaired carrier** and the name and address of its registered agent for service of process is

**MARVIN KELLEY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Thomas A. Knapp
Appeals Judge